



**BellSouth Telecommunications, Inc.**

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June 18, 2003

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VIA HAND DELIVERY

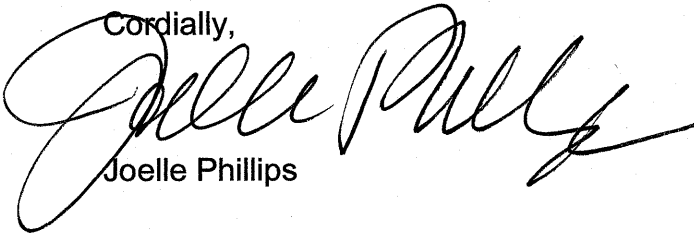
Hon. Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Tariff Filing to Modify Language Regarding Special Contracts*  
Docket No. 03-00366

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of BellSouth's Supplemental Response to AT&T's Petition to Intervene. Copies of the enclosed are being provided to counsel for AT&T.

Cordially,



Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Tariff Filing to Modify Language Regarding Special Contracts*

Docket No. 03-00366

**BELLSOUTH TELECOMMUNICATIONS, INC.'S SUPPLEMENTAL RESPONSE TO  
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.'S  
PETITION TO INTERVENE**

BellSouth Telecommunications, Inc. ("BellSouth") files this supplemental response to the Petition to Intervene of AT&T Communications of the South Central States, Inc. ("AT&T") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

**INTRODUCTION**

Pursuant to the unopposed motion of Director Jones made during the June 16, 2003 regularly-scheduled Agenda Conference, this matter has been reset to a Special Authority Conference on June 23, 2003 at 9:00 a.m. As noted in BellSouth's earlier filing, BellSouth learned of AT&T's Petition at 3:06 p.m. on Friday afternoon prior to the Agenda Conference scheduled for Monday, June 16. BellSouth files this supplemental filing in order to correct a typographical error contained in the earlier filing and to include an additional argument, which time did not permit BellSouth to include in its earlier filing.

**DISCUSSION**

**I. AT&T's Petition Was Untimely Pursuant to TRA Rule 1220-1-2-.02(4).**

On Friday, as BellSouth hurried to prepare its response, BellSouth failed to note the TRA Rule with respect to complaints opposing tariffs. TRA Rule 1220-1-2-.02(4) provides:

(4) A tariff filing does not constitute a contested case; however, any interested person may object to the tariff filing by filing a complaint. Any such complaint shall state the nature of the interest, the grounds for any such objection and the relief sought. A copy of the complaint shall be served on the company filing the tariff. The company filing the tariff shall have the right to respond to such complaint. It shall be within the discretion of the Authority to convene a contested case. ***A complaint opposing the tariff shall be filed no later than seven (7) days prior to the Authority Conference immediately preceding the proposed effective date of that tariff.*** (Emphasis added)

When AT&T filed its Petition on Friday afternoon, June 13, the next regularly-scheduled Agenda Conference was set for June 16. On that same day, however, the TRA provided notice of a "Special Authority Conference" for June 23. This Special Agenda Conference, at the time it was noticed, was intended solely to address Docket No. 03-00390 *Inclusion of Tennessee's Do Not Call in the National Do Not Call Database*. This Special Authority Conference was noticed by a TRA Notice dated June 13 and served on BellSouth by facsimile on June 16 at 7:46 a.m. See Exhibit A. In all likelihood, the TRA's Notice of Special Authority Conference had not even been released at the time that AT&T filed its Petition to Intervene and oppose BellSouth's tariff. Moreover, in light of the published Agenda for the June 16 Authority Conference, it was clear that as of June 13, the "Authority Conference immediately preceding the proposed effective date of the tariff" was the June 16 Authority Conference and not the Special Authority Conference set for considering Tennessee's Do Not Call Register.

Consequently, at the time AT&T filed its complaint, the complaint violated the TRA Rule requiring complaints opposing tariffs to be filed no later than seven days prior to the Authority Conference immediately preceding the proposed effective date of the tariff. Prior to the release of the notice of Special Conference, there could be no

argument that a complaint must have been filed seven days prior to the June 16 Agenda Conference.

While Director Jones did not elaborate upon the reasons for his suggestion that the matter be rescheduled to the Special Authority Conference and given that no opposition was expressed by the other Directors, there was limited discussion of this matter. Certainly, one understandable and obvious basis for that motion could well have been the need for members of the Authority to have additional time in order to digest and review the filings which were made so late on the Friday afternoon before the Agenda Conference on Monday. While the availability of a Special Conference on the 23<sup>rd</sup> provides the Authority with this time, it does not excuse the fact that AT&T, at the time it filed its Petition, could not have relied upon the Special Conference as the date from which the seven days were to be counted. The fact that parties now have additional time to make supplemental filings such as this one is helpful, but it certainly does not retroactively excuse AT&T's late filing in violation of TRA rules.<sup>1</sup>

Often, parties are faced with true emergencies and changes of circumstances, which necessitate filing pleadings on short notice. In such cases, parties are able to avail themselves of the TRA's Rule permitting the waiver of TRA Rules on a showing of good cause. No such cause has been shown in this case. There was ample time for any party seeking to raise issues related to this tariff to raise those issues. The choice of AT&T to wait until the last minute and the decision of the Directors to postpone consideration of this matter does not excuse AT&T's untimely filing. Further, the

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<sup>1</sup> To the extent that the matter has now been reset to June 23, for any other party seeking to intervene or file a complaint opposing the tariff, such complaints must have been filed by Monday, June 16 in order to be timely. It is BellSouth's understanding that no such filings were made. Consequently, any further complaints should be time barred, absent a showing of cause to waive the time requirement.

coincidence that a Special Conference was set for the 23<sup>rd</sup> on the very day that AT&T filed its late Petition does not transform that pleading from tardy to timely.

**II. Correction to Section 1, Page 5 of BellSouth's Original Response.**

Page 5 of BellSouth's original response contains a typographical error which BellSouth wishes to correct. The sentence which begins on page 4 and carries over to the first line of page 5 is incorrect. It should read, "In this case, however, the legislature chose to impose no such limitations for qualifications, and AT&T is wrong to suggest that the TRA may impose any such limitation on the operation of the presumption created by law." The original response incorrectly included the word "not" in that sentence.

**CONCLUSION**

BellSouth stands by the arguments submitted in its earlier pleading with respect to the substance of its revised tariff. That tariff revision which grew out of inquiries from the TRA Staff is logical and helpful. By revising its tariff, BellSouth is providing further notice to assist any interested member of the public in locating information about Contract Service Arrangements.

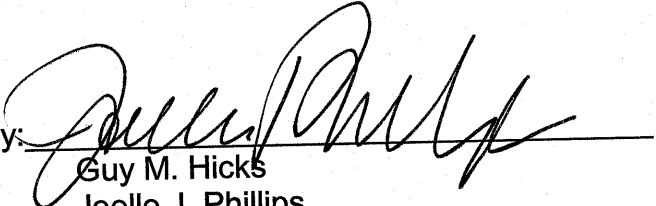
As BellSouth pointed out in its earlier filing, the language in its revised tariff is completely consistent with both the letter of the new statute, the legislative history, including Senator Trail's written reasons explaining his vote on the statute, and the unanimous action of this panel at an earlier Agenda Conference.

AT&T's untimely Petition presents no valid legal argument and no factual argument whatsoever sufficient to justify the convening of a contested case, which is within the discretion of the Directors. BellSouth respectfully urges the TRA, in view of

the foregoing and the arguments contained in its earlier pleading, to exercise its discretion to deny the Petition to convene a contested case.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:   
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**CERTIFICATE OF SERVICE**

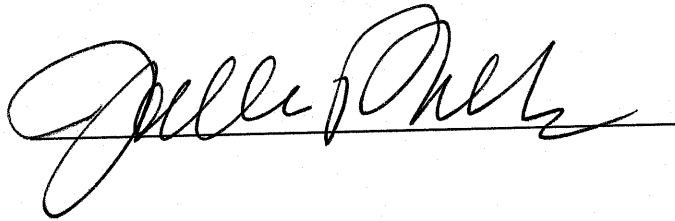
I hereby certify that on June 18, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand  
☒ Mail  
☒ Facsimile  
☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, et al.  
414 Union Street, #1600  
Nashville, TN 37219-8062

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Martha Ross-Bain, Esquire  
AT&T  
1200 Peachtree St., NE, #4068  
Atlanta, GA 30309

A handwritten signature in black ink, appearing to read "Julie P. [unclear]", written over a horizontal line.